United Nations A/69/274

General Assembly

Distr.: General
7 August 2014

Original: English

Sixty-ninth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to adequate housing

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 25/17.

* A/69/150.

14-58890 (E) 270814

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

The present report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, is submitted pursuant to Human Rights Council resolutions 15/8 and 25/17. Because the Special Rapporteur commenced her mandate only on 2 June 2014, the report is preliminary in nature, outlining some of the central opportunities and priorities about which she wishes to consult with States, civil society and other relevant stakeholders as she continues to prepare her plan of work.

The report also reflects on the valuable work undertaken by the two previous mandate holders and surveys key advances made in the first 14 years of the mandate. It then offers preliminary thoughts about the current status of the right to adequate housing and highlights priority areas in which the Special Rapporteur hopes that further advances can be made.

I. Introduction

1. The present report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, is submitted pursuant to Human Rights Council resolutions 15/8 and 25/17. Since the Special Rapporteur took up her mandate on 2 June 2014, the report is preliminary in nature, outlining some of the central opportunities and priorities about which she wishes to consult with States, civil society and other relevant stakeholders as she continues to prepare her plan of work.

2. In this, her first report to the General Assembly, the newly appointed Special Rapporteur shares preliminary observations and reflections on the right to adequate housing globally and ideas on how she intends to address key issues through the mandate. The Special Rapporteur will build upon the valuable work of her predecessors as well as other relevant human rights mechanisms, and will follow up on some key initiatives already under way. At the same time, the Special Rapporteur intends to orient the mandate in new directions to further assist States, civil society and other stakeholders, including private actors, in developing an understanding of what it means to effectively implement the international human right to adequate housing. She aims to emphasize ways in which to address ongoing and emerging challenges, to identify new opportunities and to ensure concrete advances towards the full realization of the right to adequate housing.

II. Brief history of the mandate

3. The mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, was established by the Commission on Human Rights at its fifty-sixth session (see resolution 2000/9).

4. At the creation of the mandate, the Commission underlined the cross-cutting nature of the right to adequate housing, situating that right in the context of the rights to an adequate standard of living and to non-discrimination and referring to a range of international human rights instruments recognizing the right to adequate housing.[1]

5. In December 2007, the Human Rights Council, in its resolution 6/27, reviewed the mandate of the Special Rapporteur on adequate housing and decided to extend it for a period of three years. Since then, the mandate has been extended by the Council two more times: in 2010, through resolution 15/8, and in 2014, through resolution 25/17.

[1] Resolution 2000/9 referred to, inter alia, article 25.1 of the Universal Declaration of Human Rights, article 11.1 of the International Covenant on Economic, Social and Cultural Rights, article 27.3 of the Convention on the Rights of the Child, article 14.2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. An updated list of international human rights treaties currently applicable would include articles 43.1 (d) and 43.3 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and articles 9.1 (a), 19 (a) and 28 of the Convention on the Rights of Persons with Disabilities.

6. In these resolutions, the Council has requested the Special Rapporteur to:

(a) Promote the full realization of the right to adequate housing;

(b) Identify challenges, obstacles, gaps in protection and best practices;

(c) Emphasize practical solutions with regard to implementation;

(d) Apply a gender perspective;

(e) Pay special attention to the needs of persons in vulnerable situations as well as those belonging to marginalized groups;

(f) Facilitate the provision of technical assistance;

(g) Work in close cooperation with other special procedures, United Nations bodies, treaty bodies and regional human rights mechanisms;

(h) Submit annual reports to the Council and the General Assembly.

7. On 2 June 2014, Leilani Farha started her tenure as Special Rapporteur. She is deeply appreciative of the work of her predecessors, Raquel Rolnik (2008-2014) and Miloon Kothari (2000-2008). They made significant contributions to the advancement of both the understanding and the effective implementation of the right to adequate housing, drawing attention to the experiences of individuals and communities facing evictions and insecure tenure and those engaged in other housing struggles. They shed light on acute human rights situations in which the right to adequate housing was at stake and significantly advanced the understanding of that right by giving audience to groups previously unheard from and engaging with those living in diverse circumstances.

8. The mandate on adequate housing has come a long way. It has examined an ample range of issues in dialogue with States and other relevant stakeholders, through thematic reports, country missions, working visits, guidance tools, expert consultations and events, and urgent appeals and allegation letters.

9. Addressing forced evictions and enhancing security of tenure have been central themes of the mandate; hence, the subject of extensive consultation and substantive studies. Both former Rapporteurs developed practical tools for assisting States, those affected by forced evictions and other actors in gaining a better understanding of the relevant human rights principles and their concrete application. Two important guidance tools were produced: the basic principles and guidelines on development-based evictions and displacement (2007) (A/HRC/4/18, annex I), and the guiding principles on security of tenure for the urban poor (2014) (see A/HRC/25/54).

10. Ms. Rolnik focused on the crisis of tenure insecurity in an increasingly urbanized world. Following extensive research and consultations, she proposed 10 principles to provide practical guidance for policymakers to be applied according to specific country contexts. The current Special Rapporteur intends to follow up on this important work and will encourage States to implement the guiding principles on security of tenure for the urban poor.

11. The previous Special Rapporteurs also considered the housing conditions and experiences of members of vulnerable and marginalized groups. In this regard, the mandate holders focused in particular on women and adequate housing in a series of meetings and reports. As requested by the Commission on Human Rights in its

resolution 2002/49. Mr. Kothari carried out substantive work between 2002 and 2006 on women's equal ownership of, access to and control over land and equal rights to own property and to adequate housing. He also undertook a thematic study on discrimination. In 2011, Ms. Rolnik followed up on that body of work, devoting a thematic report to the issue of legal and policy advancements in the area of women's right to adequate housing (A/HRC/19/53).

12. Through country mission reports and communications, attention was also paid to particular groups of people who have been disproportionately affected by inadequate housing and homelessness, such as persons with disabilities, indigenous peoples, children, migrants, lesbian, gay, bisexual and transgender persons, Roma communities, and persons and communities living in situations of poverty and exclusion. The previous Rapporteurs also expressed concern about discrimination faced by ethnic and religious minorities and nomadic groups.

13. The mandate has recently addressed a number of other important and emerging thematic issues, including:

(a) The global financial crisis;[2]

(b) Housing policy options including homeownership, rental and cooperative housing;[3]

(c) Post-disaster and post-conflict reconstruction;[4]

(d) The impact of major international sports events (mega-events);[5]

(e) Climate change.[6]

III. Preliminary reflections: the implementation gap

14. The right to adequate housing has been the focus of extensive commentary. It was the subject of two general comments (Nos. 4 and 7) by the Committee on Economic, Social and Cultural Rights before any other Covenant rights were similarly interpreted, and it is now one of the most considered economic, social and cultural rights. At the same time, as we move into the fifteenth year of the mandate and despite considerable efforts by civil society to ensure its realization, the well-elaborated norms and commentary on this right have not necessarily been translated into substantive progress.

15. The global extent of the phenomenon of homelessness is neither well known nor well documented. Global figures are scarce, and country-specific data are often incomplete and usually not comparable with those of other countries owing to differences in definitions and methodologies. The Special Rapporteur is concerned that at the domestic level, this statistical invisibility of a population can mean its neglect in the design of public policy and an absence of adequate responses. At the global level, it may conceal an acute global human rights crisis being faced by millions.

[2] See A/HRC/10/7.
[3] See A/67/286 and A/68/289.
[4] See A/66/270.
[5] See A/HRC/13/20.
[6] See A/64/255.

16. The evidence that is available suggests that widespread homelessness and inadequate housing persist and may in fact be on the rise. The United Nations Human Settlements Programme (UN-Habitat) has documented that the number of people living in slums has steadily increased over the past few decades, from approximately 650 million in 1990 to 863 million in 2012. According to this information, slums are characterized by severe overcrowding, a lack of basic services, including water and sanitation, and housing units that fail to protect against inclement weather and otherwise preventable diseases. The proportion of people living in such conditions is considerably higher in such regions as sub-Saharan Africa (62 per cent) and South Asia (35 per cent), compared with Latin America and the Caribbean (24 per cent) and North Africa (13 per cent).[7]

17. Widespread homelessness and inadequate housing are not restricted to States with struggling economies. As pointed out by the Committee on Economic, Social and Cultural Rights in its general comment No. 4, significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies, an observation mirrored by Miloon Kothari in his 2005 report on homelessness (E/CN.4/2005/48). The Special Rapporteur is concerned that the spectre of widespread and, in many cases, increasing homelessness in the most developed countries and countries suffering from grossly unequal distribution of wealth suggests a serious dissonance between prevailing models of economic development and the realization of the right to adequate housing that is global in scope.

18. The consequences of inadequate housing and homelessness are severe, with implications for almost every other human right, including the rights to health, education, protection of the family, social security, work and, in many cases, life. Malaria, cholera, dengue fever and many other diseases that continue to ravage the poor in tropical countries are closely linked to poor housing conditions, as are tuberculosis, pneumonia and many other illnesses affecting those who are homeless in northern climates. Yet, despite the severity of the consequences and the fundamental human rights that are involved, homelessness and inadequate housing are still often seen as the preserve of socioeconomic policy and as insulated from the kind of legal human rights accountability that is applied to government policies affecting other human rights. Even when housing is recognized as a human right, how it should be implemented is not always clear to States and other stakeholders.

19. The growing gap between the norms and standards that have been developed internationally and the realities of systemic homelessness, substandard housing conditions, unaffordable rentals and lack of access to adequate housing suggests to the Special Rapporteur a crisis of commitment to or understanding of effective implementation of the right to adequate housing. In this light, the Special Rapporteur considers it imperative for her work that concerted effort and emphasis be placed on how human rights norms related to housing can be transformed into domestic law and policy and made more effective in addressing the human rights crisis of homelessness and inadequate housing that continues to exist in many countries around the world.

[7] United Nations, *The Millennium Development Goals Report 2014*, target 7.D.

IV. Thematic and substantive priorities

A. Supporting national-international interaction

20. In her collaborative work with other practitioners at the domestic and international levels, the Special Rapporteur has learned of the importance of sustaining a dynamic interconnection between activities at the national level and those at the international level. If international human rights norms and standards are to be made meaningful and effectively implemented at the national level, they must be developed and interpreted in the context of national experiences and benefit from advances made in domestic law and practice. Similarly, domestic human rights must be nurtured and strengthened by the substantive norms and universal principles developed at the international level.

21. Over the past two decades, the understanding of the right to adequate housing in international human rights has benefited significantly from activities carried out at the national level. National movements and campaigns have emerged to address fundamental issues related to housing, including: sustainable development, land rights, security of tenure, homelessness, large-scale development projects, mega-events, the erosion of social housing, the impact of the financial crisis, and the denial of services essential for the adequacy of housing.

22. More than ever, civil society organizations are applying international human rights principles to specific national circumstances and using the United Nations human rights system, including treaty monitoring bodies and the universal periodic review, to promote the development of authoritative interpretations and applications of the right to adequate housing that address national and local challenges and clarify States' human rights obligations in these contexts.

23. Civil society organizations have brought new and diverse housing issues before the Committee on Economic, Social and Cultural Rights, and also before the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. By doing so, they have encouraged various treaty monitoring bodies to consider State obligations with respect to the right to housing in diverse circumstances and to clarify the links between the right to housing and other human rights.[8] These dynamic interactions between national experiences and international human rights mechanisms benefit and strengthen both.

24. A crucial aspect of the national-international interaction that has occurred in recent years has been the challenge of ensuring access to justice for claimants of the right to adequate housing. The number of legal cases involving the right to adequate housing that have been brought before domestic courts and regional and international bodies has grown in recent years. And courts are increasingly relying on international human rights norms in the adjudication of housing rights cases.

[8] See, for example, E/C.12/PRY/CO/3, CRC/C/TLS/CO/1, CRC/C/DZA/CO/3-4 and CERD/C/AZE/CO/6.

General comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights, for example, have been referred to by courts in several domestic cases.[9]

25. At the same time, advances made by domestic courts and national human rights institutions have informed positive developments in international human rights. For example, the experience of national courts and the content of national-level housing rights jurisprudence significantly informed the content and structure of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which provides, for the first time, for the adjudication of the right to adequate housing under the Covenant.[10]

26. Ensuring access to justice for claimants of the right to adequate housing has emerged as a central and shared challenge for States and treaty bodies. Meeting that challenge will continue to require ongoing dialogue and interaction between States, including domestic courts, and international human rights bodies and procedures.

27. The Special Rapporteur will solicit input from States, treaty bodies, national human rights institutions, civil society organizations, judges and human rights practitioners in considering how the mandate can support the critical dialogue between domestic and international human rights norms and practice. She also hopes to lend visibility to the work being undertaken to elaborate the content of the right to adequate housing at all levels and encourage advances in ensuring access to justice in relation to that right. She is committed to fostering and enhancing the interdependence of national and international law and practice in all aspects of her work, including communications, country visits and thematic reports.

B. Clarifying the obligation of progressive realization

28. Having considered emerging socioeconomic patterns affecting the right to adequate housing, the important work of many stakeholders and developments in the field of economic, social and cultural rights more generally, the Special Rapporteur commences her mandate with an understanding of several key challenges in the implementation of the right to adequate housing, and a recognition of emerging opportunities, that she hopes to address and engage as she undertakes further consultations.

29. Central to State obligations with respect to the right to adequate housing is the obligation to take positive measures to realize that right. According to article 2.1 of

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[9] See, for example, European Committee of Social Rights, Complaint No. 39/2006, *European Federation of National Organizations Working with the Homeless (FEANTSA) v. France*, decision on the merits of 5 December 2007; High Court at Embu, Constitutional Petition No. 2 of 2011, *Ibrahim Sangor Osman and Others v. the Hon. Minister of State for Provincial Administration and Internal Security and Others*; and European Committee of Social Rights, Complaint No. 15/2003, decision on the merits of 8 December 2004, *European Roma Rights Center v. Greece*. See also A/63/275, chap. IV.

[10] Aspects of the High Court of South Africa case *Government of the Republic of South Africa and Others v. Grootboom and Others* significantly informed the development of article 8.4 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which enunciates the "reasonableness standard". See: "Reasonableness and Article 8(4)", in *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (forthcoming) at http://www.jus.uio.no/smr/english/about/programmes/serp/research/optional-protocol-.html.

the International Covenant on Economic, Social and Cultural Rights, the State is obliged to take steps, through international assistance and cooperation, to the maximum of its available resources, with a view to achieving progressively the full realization of the right by all appropriate means, including particularly the adoption of legislative measures. Historically, however, the obligation of States to take steps or positive measures to realize the right to adequate housing has not received as much attention in the development of legal norms as other aspects of States' obligations. Legal norms have focused more often on State action that interferes with the right to adequate housing. As a result, at the international level there is more clarity about legal norms applied to forced evictions and comparatively less about the positive obligation to address homelessness or to allocate the resources necessary to ensure access to housing for marginalized groups. Similarly, domestic courts tend to deal with more cases and develop more jurisprudence on evictions and service disconnections than on failures to prioritize the development of services for informal settlements.

30. There are, of course, particular challenges for international human rights bodies and domestic courts in developing precise requirements for compliance with the obligation of the progressive realization of the right to adequate housing. Obligations of this sort must be assessed in relation to contextual, legal and historical factors such as available resources, competing needs, economic policy and international assistance. There is no simple formula for defining the precise legislative measures that are required or for ascertaining the necessary budgetary allocations. However, the fact that compliance with these aspects of the right to adequate housing can be assessed only in the context of particular circumstances should not lead to a lack of human rights accountability or to the ignoring of violations.

31. The nature of State obligations in different circumstances must be clarified through procedures and mechanisms through which obligations can be assessed in context. Just as legal norms governing security of tenure and evictions are clarified through adjudication in particular circumstances, so too the obligations linked to progressive realization, such as maximum available resources and appropriate legislative measures, must be fleshed out by human rights bodies and courts to clarify their meaning in particular circumstances.

32. One of the most significant advances in both domestic and international law in recent years has been the recognition that all aspects of the right to adequate housing and other economic and social rights are justiciable.[11] Debates about the justiciability of economic, social and cultural rights, in particular the obligation of progressive realization, are now, thankfully, behind us. Domestic courts and regional bodies have demonstrated that all components of economic and social rights can be competently adjudicated. Accordingly, a comprehensive approach to access to justice was affirmed in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly on the sixtieth anniversary of the Universal Declaration of Human Rights.[12] The

[11] See General Assembly resolution 63/117.

[12] See Catarina de Albuquerque, "Chronicle of an announced birth: The coming into life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights — The missing piece of the International Bill of Human Rights", in *Human Rights Quarterly*, vol. 32, No. 1 (2010); see also Bruce Porter, "The reasonableness of article 8 (4) — Adjudicating claims from the margins", in *Nordic Journal of Human Rights*, vol. 27, No. 1 (2009).

communications procedure covers all aspects of the rights set out in the Covenant, including the obligations linked to progressive realization under its article 2.1.

33. The Special Rapporteur intends to ensure that her mandate builds on the comprehensive and fully inclusive approach to access to justice in relation to the right to adequate housing. She will ensure that her mandate continues to address concerns arising from forced evictions, demolitions, displacement and other State actions, but she intends to place a particular focus on explaining and clarifying the obligation of States to take reasonable steps, including appropriate legislative measures, towards the full realization of the right to adequate housing.

34. The Special Rapporteur will also consider ways in which the mandate can support access to justice in relation to all aspects of the right to adequate housing. She recognizes that ensuring access to justice, particularly with respect to claims involving the obligation of States to take positive measures towards the realization of the right to adequate housing, presents new challenges. Courts and human rights bodies need to be provided with reliable evidence concerning resource constraints and competing needs. More participatory approaches to the adjudication of rights need to ensure that all stakeholders, including marginalized groups, are able to have their voices heard. Governments need to put accountability mechanisms in place, and to work in partnership with claimants and other stakeholders to improve policies and ensure effective remedies. Researchers and international monitoring groups need to further develop methodologies for providing statistics and reliable indicators of compliance with all aspects of the right to adequate housing.

35. Often, States have no effective mechanisms in place for the assessment of housing programmes or policies, budgetary decisions or administrative decisions in terms of compliance with the right to adequate housing. Vulnerable groups must have access to procedures through which they can identify and seek redress for potential violations of their rights.[13] As the Special Rapporteur on extreme poverty and human rights has noted, the lack of judicial review or complaints mechanisms for social policy, compounded by a lack of justiciability of economic, social and cultural rights at the domestic level, creates the perception that social policy is a charitable measure rather than part of an obligation to ensure the enjoyment of human rights. The recognition of rights imposes the obligation to establish judicial or other remedies that enable rights holders to invoke their protection in courts, or before other similarly independent bodies, when they are infringed.[14]

C. Equality, non-discrimination and the right to adequate housing

36. The Special Rapporteur is deeply concerned about the discrimination and inequality in housing experienced by various individuals and groups, especially those most marginalized and vulnerable to rights violations. Indigenous peoples, persons with disabilities, particular groups of women (such as women with children and older women), migrants, ethnic and racial minorities, and many other marginalized groups continue to be disproportionately affected by homelessness and inadequate housing.

[13] A/67/278, para. 31.
[14] Ibid., para. 32.

37. In order to be effective, strategies to address violations of the right to adequate housing must be based on an equality rights framework and must address the systemic patterns of discrimination and inequality that deprive particular groups of equal enjoyment of that right. Despite the considerable progress made at both the national and international levels on the interpretation and understanding of non-discrimination and equality, the relationship between those concepts and their importance for the implementation of the right to adequate housing are still not well understood.

38. The principle of non-discrimination is a pillar of international human rights law. It is well recognized that equality and non-discrimination are cross-cutting, applying to all human rights.[15] The non-discrimination obligation is of immediate application. States are obliged to refrain from discrimination in laws and policy and to provide adequate constitutional or legislative protections from discrimination under domestic law.[16] Concrete, deliberate and targeted measures are required in order to ensure that discrimination is eliminated.[17]

39. The meaning and the application of non-discrimination and equality in the context of economic, social and cultural rights have been described in a variety of international human rights documents.[18]

40. Significant advances in terms of understanding how non-discrimination and equality apply to the right to adequate housing have emerged from work that has been undertaken on women and housing. In addition to the groundbreaking work carried out on this issue by both previous Special Rapporteurs, as described above, other contributions have been made by United Nations agencies.[19] Civil society organizations have also played a central role in elaborating the content and scope of women's right to adequate housing.

41. Work that has been done on equality and non-discrimination in relation to other groups, such as persons with disabilities and migrants, has also advanced understanding of the intersection of equality and non-discrimination with economic, social and cultural rights, including housing.

42. Disability rights organizations have articulated a "social model" of disability (as opposed to a medical model) that addresses systemic social barriers to equality, ensures full and effective participation and inclusion in society, and recognizes that non-discrimination includes the right to reasonable accommodation. The principles have been incorporated into the Convention on the Rights of Persons with Disabilities, which the Special Rapporteur views as a significant development with

[15] Article 2.1 of the International Covenant on Civil and Political Rights and article 2.2 of the International Covenant on Economic, Social and Cultural Rights are identical in this regard. In addition, article 26 of the International Covenant on Civil and Political Rights guarantees equality before the law without any discrimination.

[16] A/HRC/23/50, para. 78.

[17] E/C.12/GC/20, para. 36.

[18] See, for example, E/C.12/2005/4, E/C.12/GC/20, CEDAW/C/2004/I/WP.1 and A/HRC/26/39).

[19] See, for example, UN-Habitat, *Policy Makers Guide to Women's Land, Property and Housing Rights Across the World* (2007) and "Women's equal rights to housing, land and property in international law" (2007); see also Office of the United Nations High Commissioner for Human Rights (OHCHR), *Women and the Right to Adequate Housing* (2012); and OHCHR and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Realizing women's rights to land and other productive resources" (2013).

respect to the right to adequate housing. Unlike any other treaty, the Convention encompasses the rights to non-discrimination and substantive equality as well as economic and social rights, including the right to adequate housing. Moreover, the Convention includes unique provisions regarding "access to justice" and "national implementation and monitoring" to ensure that principles of substantive equality are fully implemented through domestic law and policy.

43. Migrant workers have also made important advances in addressing discrimination in economic and social contexts, such as discrimination based on citizenship or immigration status, including "undocumented" status. Migrant domestic workers, migrant construction workers (for example, those working in extractive industries or large-scale infrastructure projects), children, older migrants and migrants in irregular situations are the most vulnerable, often lacking administrative or judicial remedies for their housing claims. Migrant workers and the members of their families frequently face housing conditions characterized by overcrowding, irregular or unregulated rental markets, high exposure to arbitrary changes in the cost of rent or essential services, and substandard living conditions, and can be subject to abuse, in particular when they are undocumented.

44. A number of key principles of non-discrimination and equality in the context of economic and social rights and international human rights law are of particular relevance to the right to adequate housing: (a) discrimination is prohibited whether it be direct (for example, a law or policy explicitly bars women from obtaining loans in order to purchase housing) or indirect (for example, in order to provide credit for the purchase of housing, a bank requires that borrowers have a type of collateral or specific employment references that many women and migrants, particularly if they are undocumented, are unable to provide); (b) it is the effect of a law or policy rather than its intent that should be the focus of discrimination analysis; and (c) discrimination and inequality can occur equally in the private and public spheres, and States have the obligation to prevent and provide remedies to discrimination, regardless of where it occurs.

45. It is also widely accepted that equality and non-discrimination must be achieved substantively, not merely formally.[20] This means recognizing that vulnerable groups are situated differently, that their differences need to be accommodated in laws, policies and programmes, and that States and other actors have a positive obligation to address and remedy systemic patterns of inequality.

46. A number of developments related to the grounds of discrimination have emerged under international human rights law. For example, the unique effects of "multiple discrimination" (such as the experience of women belonging to racial or ethnic minority groups) have now been recognized as requiring specific consideration and remedies. In addition, the ground of "economic and social situation", including homelessness and poverty, is now understood as a distinct ground of discrimination. It is recognized that those facing discrimination in access to housing because of ethnic origin, sex or disability, for example, are often subject to further stigmatization, discrimination and criminalization because of their socioeconomic and housing status, such as living on the streets, in informal settlements or in substandard housing.

[20] See E/C.12/2005/4 and E/C.12/GC/20; see also E/2008/76.

47. It is imperative that these fundamental principles of equality and non-discrimination in relation to economic and social rights be rigorously applied in the area of housing. Prevailing patterns of inequality and exclusion in housing are often linked to indirect and unintentional forms of discrimination, to failures to accommodate the needs of various marginalized groups, and to inadequate attention to the obligations linked to substantive equality.

48. The fact that the rights to non-discrimination and equality in housing may require positive obligations to address and ameliorate existing patterns of disadvantage is often ignored. Much more can be done to ensure that the principles of non-discrimination and equality are fully incorporated into housing policies, programmes, legislation and budgetary allocations.

49. Substantive equality obligations in terms of housing are often linked to the obligation to progressively realize the right to adequate housing. Overcoming systemic patterns of discrimination and inequality with regard to people with disabilities, displaced persons, women with children and other groups relies on the implementation and development of programmes and strategies over time. Reasonable accommodation, as is the case with progressive realization, is subject to limitations linked to available resources. The Special Rapporteur intends to consider how these principles of non-discrimination and equality apply to the housing experiences of particular vulnerable groups.

D. Engaging the evolving nature and role of the State

50. Under international human rights law, it is the State that is held responsible for the compliance with international human rights to which it is bound. The focus of monitoring and constructive dialogue at the international level has been on national Governments.

51. National Governments, however, cannot be viewed as the only relevant actors with respect to the implementation of international human rights. Subnational governments, including state/provincial and municipal governments, often have significant authority with respect to housing and therefore share responsibility for implementing the international human rights responsibilities of the State. Involvement in the implementation of the right to adequate housing has become ever more diversified with recent patterns of the delegation of responsibilities relating to housing from the central Government to more local governments in many countries, and the increasing delegation of governmental responsibilities to public-private partnerships or private actors.

52. Moreover, global actors such as transnational corporations and multilateral or bilateral financial institutions, and United Nations agencies play significant roles in the implementation of the right to adequate housing. The actions of transnational extractive industries or development projects initiated and overseen by multiple partners, including international financial institutions, may have far-reaching effects on that right.

53. The evolving nature and diversification of the State and the multiplicity of actors who may be involved in fulfilling its obligations under international human rights law make implementation all the more complicated. In many countries, housing programmes and other policies necessary to the implementation of the right

to adequate housing, such as income support, community support for persons with disabilities, judicial oversight of security of tenure, zoning or water and sewage services may fall under the authority of subnational or municipal governments.

54. In addition, governments often engage in partnerships with private housing or service providers or community-based organizations to administer programmes. Private landlords, landowners, real estate agencies, service and utility providers and other relevant private actors have significant effects on the right to adequate housing. It has become increasingly important that these diverse actors engaged in the implementation of State obligations with respect to the right to adequate housing be fully aware of the nature and scope of these obligations. Some advances have been made at the international level towards a better understanding of the responsibilities of businesses and private actors, but the obligation of States to regulate businesses so as to ensure that their actions are consistent with the right to adequate housing is critical to the effective implementation of the right to adequate housing.

55. For many of those who are denied access to adequate housing or whose right to housing is under threat, the involvement of the national Government can appear to be extremely remote, when in fact its actual role in relation to impugned policies may be minimal. The actors with whom stakeholders are directly engaged in attempting to realize their rights are often local governments, municipalities or private owners or companies.

56. While the Special Rapporteur believes that it is important to emphasize the ultimate responsibility of States to ensure compliance with their international human rights obligations so that there is no "contracting-out" of fundamental human rights guarantees, she also recognizes that effective implementation requires that all levels and branches of government be cognizant of, and fully committed to implementing, the State's obligations. The implementation of the right to adequate housing relies on local governments, community organizations and private actors, often acting in partnership, affirming such implementation as a joint commitment and a collaborative project.

57. The Special Rapporteur is committed to seeking out proper channels through which to engage constructively with the full range of actors that play significant roles in relation to the implementation of the right to adequate housing, and hopes to provide support for the enhancement of human rights accountability at all levels of government.

V. Some priority areas of focus for the mandate

58. The Special Rapporteur aims to assist States, civil society and other relevant stakeholders in ensuring the implementation of the right to adequate housing at the domestic level by focusing on several key thematic areas in the course of her mandate.

59. As noted above, the themes and priority areas of work identified in the present report are preliminary in nature, as the Special Rapporteur wishes to continue her consultations with States and other relevant stakeholders, notably United Nations agencies, other special procedures mandate holders, civil society organizations and national human rights institutions, in order to refine her plan of work for the next

few years. Furthermore, she plans to develop each of these themes in a collaborative and participatory manner.

A. Marginalized and vulnerable groups

60. Addressing the housing conditions of persons in vulnerable situations and those in situations of exclusion and marginalization will be a priority of the mandate. The Special Rapporteur will continue to focus on non-discrimination and equality in the context of housing and ensure that all of her work is informed by the key principles of equality and non-discrimination.

61. The Special Rapporteur will also ensure that the housing conditions of women remain prominent within all aspects of the mandate. In this regard, she intends to continue the close collaboration the mandate holder has had with civil society organizations spearheading the work on women and the right to housing. She intends to cooperate with bodies within the United Nations system interested in developing a deeper understanding of women's right to adequate housing, including human rights treaty monitoring bodies, the Working Group on the issue of discrimination against women in law and in practice and other relevant special procedures.

62. Working closely with the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on adequate housing hopes to further consider the housing conditions and experiences of indigenous peoples globally and to support the development of more effective strategies for protecting and ensuring their land and housing rights.

63. Drawing on the work on stigmatization and exclusion undertaken by her predecessor and other Special Rapporteurs,[21] the Special Rapporteur on adequate housing intends to conduct research into the ways in which housing status is linked to criminalization, stigmatization and exclusion and how that problem can be addressed.

64. The Special Rapporteur intends to place some focus on the housing rights of persons with disabilities and migrant workers (and their families). To that end, she will solicit information on the housing experiences and conditions of persons with disabilities and of migrant workers with a view to identifying barriers to adequate housing and developing recommendations for action at the national level on the part of States and other relevant stakeholders.

65. In relation to persons with disabilities, the Special Rapporteur wishes to find avenues for collaborative work with the Committee on the Rights of Persons with Disabilities and the soon-to-be-appointed Special Rapporteur on the rights of persons with disabilities, to advance the understanding of the scope and nature of the right to adequate housing and the right to independent living in the light of the specific situations faced by persons with physical and mental disabilities.

66. Regarding migrant workers (and their families), the Rapporteur wishes to consider the particular vulnerabilities faced by such workers, especially if they are undocumented, in gaining access to and maintaining adequate housing and living

[21] See A/66/265 and A/HRC/21/42.

conditions, whether owing to administrative or legal obstacles or to de facto discrimination and multiple discrimination. The Special Rapporteur hopes to work collaboratively with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Special Rapporteur on the human rights of migrants to assess policies, programmes and measures in relation to the right to an adequate standard of living, including housing, and to seek avenues for cooperation to ensure adequate housing and living conditions for migrant workers.

B. Homelessness

67. Homelessness is at the end of the housing spectrum and must be understood as a prima facie violation of the right to adequate housing (i.e., where any significant number of individuals are deprived of basic shelter or housing, a State is prima facie failing to discharge its international human rights obligations).[22] During her mandate, the Special Rapporteur intends to organize consultations and expert discussions to explore various dimensions of this violation of the right to adequate housing, including the obligation of the State to address homelessness.

68. The Special Rapporteur will also focus on developing a contextual analysis of the causes and consequences of homelessness as experienced in both developed countries — particularly in the light of the effects of the global financial crisis — and developing countries. She anticipates that this work will highlight the interdependence of the right to housing with the broader right to an adequate standard of living, as well as other rights such as health, social security, food and work.

69. In coordination with relevant mandate holders, the Special Rapporteur wishes to take up the problem of laws that criminalize homelessness or activities associated with homelessness, such as sleeping in public places, and to consider the discriminatory attitudes and perceptions that often lie behind such laws. In this regard, the Special Rapporteur will explore in some depth the stigmatization and discrimination often suffered by the homeless or those with other housing status (for example, "squatters", "slum dwellers" and "public/social housing tenants"), and will build upon the previous work of mandate holders, including the report of the Special Rapporteur on extreme poverty and human rights on the penalization of people living in poverty (A/66/265) and the report of the Special Rapporteur on the human right to safe drinking water and sanitation on stigma and the realization of the right to safe drinking water and sanitation (A/HRC/21/42).

C. Housing strategies based on human rights

70. The causes of homelessness and inadequate housing are multifarious, interrelated and complex. They include not only forced evictions and conflict, but also many other structural issues, such as inadequate services and infrastructure; barriers to access to credit; land speculation and zoning; displacement and migration; environmental degradation; and rapid urbanization and the development of megacities. Tackling the causes of homelessness often requires a multifaceted approach that relies on comprehensive and coordinated strategies, and is

[22] E/1991/23, annex III, para. 10.

implemented in a collaborative fashion with various levels of government and relevant stakeholders. What is needed, as a starting point, is the articulation of key principles through which multiple policies and programmes can achieve a unified purpose and a coherent approach. The Special Rapporteur believes that a human rights approach to adequate housing and homelessness has much to offer in this regard and, if implemented, can be transformational, resulting in real change rather than a temporary fix.

71. In most States, housing and homelessness are treated as a matter of policy, not as a matter of human rights, with concomitant obligations on the part of national and subnational governments, judiciaries and other actors. The development of a national housing strategy can be a critical first step and an immediate obligation in relation to the progressive realization of the right to adequate housing. The key components of a rights-based housing strategy, however, have yet to be fully articulated at the international level.

72. Through consultations and expert meetings with national and international housing rights experts, government officials, United Nations agencies, civil society representatives and parliamentarians, the Special Rapporteur will develop a thematic report in which to identify and elaborate on the key characteristics required of national housing strategies based on human rights.

73. As an adjunct to this work, the Special Rapporteur will also consider housing strategies in the context of post-disaster and post-conflict reconstruction. These issues have been at the heart of the work of the housing mandate holder in the past, and the Rapporteur is committed to continuing her engagement with key humanitarian actors whenever possible.

D. Access to justice

74. Under international human rights law,[23] ensuring access to effective remedies for violations of human rights is a critical component of States' obligations, indispensable to the full enjoyment of such rights. Thus, as with other rights, States have a positive obligation to establish institutional mechanisms and systems at the national level to ensure that all individuals and groups can claim the right to adequate housing and seek effective remedies.

75. The Special Rapporteur wishes to learn more about how the right to adequate housing can be made the subject of effective complaints procedures in domestic law and can be better integrated into housing policies and programmes through rights-based approaches. She is committed to working collaboratively with groups advocating for rights claimants, and with government officials, advocates, national human rights institutions, courts, housing policy decision makers and other stakeholders, to assist in meeting the challenges of access to justice and enhanced accountability in relation to all aspects of the right to adequate housing.

76. Within the international human rights system, with the recent advent of the optional protocols to several treaties, access to justice with respect to housing rights violations is now also a matter of international adjudication. The scope and content

[23] E/C.12/1998/24.

of standards of compliance — reasonableness, progressive realization and maximum available resources — will now be gradually clarified.

77. The Special Rapporteur is interested in building on these significant opportunities at the domestic and international levels. She will identify areas in which support and guidance are needed by Governments, courts, advocates, rights claimants and human rights institutions, with a view to supporting ongoing work at the national and international levels in this regard.

78. To this end, the Special Rapporteur expects to devote a thematic report to the issue of access to justice in relation to the right to housing. In so doing, the Special Rapporteur hopes to: (a) assess and document barriers to access to justice experienced by claimants; (b) consult with government authorities, judges and a broad range of experts on strategic litigation about challenges in ensuring access to justice; and (c) promote research and statistical analysis with a view to providing reliable evidence and indicators of compliance.

79. The Special Rapporteur wishes to organize an expert consultation as well as an open public consultation to obtain views and contributions from all relevant stakeholders about these issues. Given their relevance, she wishes to engage particularly with the judiciary and international associations of lawyers and judges.

E. Subnational governments

80. As noted above, authority over laws, programmes and services necessary to the implementation of the right to adequate housing is often spread among various levels of government and other actors. During her mandate, the Rapporteur will assess, in the context of the wide range of systems of government, how all levels of government can work effectively together to implement the State's housing rights obligations. She will also endeavour to provide guidance to enhance the capacity of subnational governments to deal with the components of the right to adequate housing that fall within their authority.

81. The Special Rapporteur will also conduct research into mechanisms that ensure that diverse actors can be held accountable for their role in the implementation of State obligations and that promote effective interaction between national and subnational governments in the realization of the right to adequate housing.

82. The Rapporteur anticipates that her work to clarify the obligations of various levels of government may shed light on practical issues regarding the human rights responsibilities of non-State actors, such as private landlords, construction and real estate companies, and service and utility providers, responsible for assisting States and subnational governments in the provision and management of housing, as well as in the provision of the utilities and services necessary to ensure the quality and habitability of housing. In this regard, she will draw on the work of her predecessors as well as that of other special procedures, such as the thematic report of the Special Rapporteur on the human right to safe drinking water and sanitation on the participation of non-State service providers in water and sanitation service delivery.[24]

[24] See A/HRC/15/31.

F. Housing as part of the global agenda

83. In the coming months, the post-2015 global development agenda will be finalized and adopted. As several independent experts have observed during consultations at the national, regional and international levels, as well as throughout various negotiations, this process has the potential to make a contribution to the enjoyment of human rights by billions of people. The Special Rapporteur shares the view that a global agenda needs to prioritize the elimination of inequalities, by enhancing social protection, participation and accountability. The Special Rapporteur will closely monitor the outcome of the remaining discussions, in particular in relation to the inclusion of housing rights and broader economic and social rights standards and accountability mechanisms in the goals and indicators of the agenda.

84. A second global event of particular relevance for the mandate holder is the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) to be held in 2016. The Special Rapporteur intends to contribute to that process on the understanding that human rights can be a central and transformative component of strategies for addressing urbanization and sustainability, which present themselves now, more than ever before, as immense challenges and opportunities.

85. There are a number of issues that are global or transnational in scope and that have a direct impact on the right to adequate housing in many countries. Global actors such as transnational corporations and multilateral or bilateral financial institutions, and United Nations agencies play significant roles in relation to the right to adequate housing. The actions of transnational extractive industries or development projects, sometimes initiated and overseen by multiple partners, including international financial institutions, may have far-reaching effects on the right to adequate housing, including large-scale displacements, the destruction of sources of livelihood and forced evictions. Similarly, trade and investment agreements and investor dispute mechanisms increasingly involve important issues of public policy and often fail to ensure the consideration of fundamental rights such as the right to adequate housing. These problems have led to important work to assess and clarify issues of corporate accountability, extraterritorial obligations and human rights in relation to trade and investment agreements. The Special Rapporteur expects to be actively engaged with respect to these emerging issues as they relate to the right to adequate housing.

86. In undertaking these tasks, the Rapporteur wishes to underscore the importance of cooperation with key international actors and partners to enhance the protection of the right to adequate housing at the global level. In the coming months, the Special Rapporteur intends to devote time and effort to engaging with States in all regions, and also with United Nations agencies and entities, including UN-Habitat, the Food and Agriculture Organization of the United Nations, the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees and the Office of the United Nations High Commissioner for Human Rights.

87. The Special Rapporteur values and will continue to nurture the long-standing cooperation that the mandate holder has developed with civil society organizations, community organizations and regional and international networks around the world,

notably those with a focus on the right to housing, women's housing and land rights, the "right to the city", economic, social and cultural rights and strategic litigation and, in general, organizations focused on the living conditions of people in situations of poverty or exclusion. She also wishes to consolidate channels of cooperation with tenant associations and with emerging movements and groups that will help to ensure that the mandate addresses housing rights issues as they arise. She hopes that the mandate will also give rise to new relationships, particularly through her missions and her participation in various forums, with constituencies that play an active role in the development of their communities, such as unions and community associations.

88. Given the specific risks to which human rights defenders working in the areas of housing, land, eviction or gentrification are exposed, the Rapporteur aims to support the call for enhanced guarantees for the essential work that they carry out.

89. The Rapporteur also intends to engage in sustained work with international financial institutions that have relevant roles in funding and providing technical assistance for housing and infrastructure projects, including the World Bank, to ensure that those roles are supportive of housing rights. In a similar vein, she wishes to explore opportunities for dialogue with international cooperation and assistance agencies created by various States.

VI. Conclusions

90. **The present report has outlined a number of reflections as well as key thematic priorities for the Special Rapporteur at the start of her mandate. She will present her first thematic report to the Human Rights Council in accordance with its annual programme of work, at its twenty-eighth session. The Special Rapporteur welcomes comments, contributions and suggestions regarding the present report and looks forward to engaging in further consultation with States and all relevant stakeholders.**